

**Employer Status Determination  
Baja California Railroad, Inc. (BJRR)**

This is the decision of the Railroad Retirement Board regarding the status of Baja California Railroad Inc. (BJRR) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts, collectively known as the Acts. The status of this company has not previously been considered.

Information regarding BJRR was submitted by the company's controller—first Ana Laura Tufo and then Manuel Hernandez. Alejandro de la Torre Martinez is the Chief Executive Officer and owns the company along with Fernando Beltran and Fernando Cano. There are no affiliated companies. BJRR has offices in San Diego, California and Tijuana, Mexico. It is a short line operator located in the international border region of San Diego, California and Baja California, Mexico. The BJRR stretches 71 kilometers from the San Ysidro, California-Tijuana, Mexico port of entry to the city of Tecate, Mexico. BJRR interchanges at the San Ysidro rail yard with the San Diego and Imperial Valley Railroad, a covered employer under the Acts (BA No. 3758). BJRR interchanges solely with the San Diego and Imperial Valley Railroad. BJRR runs approximately ½ mile in the United States and then goes southbound through customs and into Mexico providing rail freight services to customers from various industries such as gas, construction, food, and manufacturing. All deliveries are made in Mexico. The annual volume is approximately 4,500 carloads of exports to Mexico.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad \* \* \*.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b), contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. 3231.

The Surface Transportation Board has jurisdiction over rail transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network. See 49 U.S.C. 10501(a)(2)(A). As noted above, BJRR engages in rail activity in the San Ysidro rail yard with the San Diego and Imperial Valley Railroad and then through the United States border with Mexico. As a result, it operates rail transportation in the United States between a State and place in the same States as part of the interstate rail network. In light of the evidence as summarized above, it is determined that BJRR is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective January 1, 2013, the date it first compensated employees. Cf. Rev Ruling 82-100, 1982-1 C.B. 155, wherein the Internal Revenue Service ruled that a railroad becomes an employer subject to taxes under the Railroad Retirement Tax Act when the company first hires employees to perform functions directly related to its carrier operations.

However, the Board further notes that section 1(d)(2)(i) of the Railroad Retirement Act qualifies the definition of covered employment with respect to employees of non-United States companies as follows:

(i) an individual shall be deemed to be in the service of an employer \*\*\* not conducting the principal part of its business in the United States only when he is rendering service to it in the United States;

Section 1(e) of the RUIA contains a definition of service substantially identical to the above, as does section 3231(d) of the RRTA (26 U.S.C. 3231(d)). The Board has held that service performed for a company not conducting the principal part of its business in the United States is creditable only as to the service that is performed in the United States (L-37-1106 and L-46-331).

The evidence available indicates that BJRR is a Mexican company which derives the principal portion of its income from the operation of all but ½ mile of 71.4 kilometers of rail line in Mexico. Since BJRR conducts the principal part of its business in Mexico, the Board finds pursuant to section 1(d)(2)(i) that effective January 1, 2013, BJRR is an employer only with respect to any service by its employees which is performed within the United States. Service performed within Mexico, whether by Mexican residents or citizens, or by citizens or residents of the United States, is excluded from coverage under the Acts.

Original signed by:

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